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Supreme Court, U.S.
FILED

No: 06-1313

05149 4 MAY 9 - 2006

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In The

SUPREME COURT OF THE UNITED STATES

PEPI SCHAFLER (SUMMER)

Petitioner

v

HSBC BANK USA, (MARINE MIDLAND BANK)

M & T TRUST CO BANK

Respondents

Petition for a Writ of Certiorari
to the New York Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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Petitioner
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QUESTIONS PRESENTED

1. Did HSBC Bank USA formerly Marine Midland Bank and Manufacturers and Traders Trust Co Bank-M & T Bank in a racketeering conspiracy with others , embezzle, convert, steal and "launder" $95.600 belonging to Petitioner, and did they thereafter engage in 20 years of brazen lies, fraud, deceit, serial perjury, suborning perjury in others , false pretenses and other malfeasance to cover up their criminal and dastardly acts , and deprive Petitioner of her money?

2 . Is Petitioner entitled to restitution damages of $ 95.600, compounded interest from Nov 8, 1985, $65.000 in legal fees paid to seven law firms , and punitive damages of at least $250.000 ?

3 . Did Mr. Scott Miller Esq, house counsel for HSBC and MM , and Ms. Cheryl Storie Esq. counsel for M& T knowingly and intentionally file many hundreds of false and perjured documents with the courts , lie to them in oral arguments disrespecting the judicial process and the laws they have sworn to uphold?

4. Did this depraved misconduct interfere with the courts ability to perform it's duties as per their constitutional oath?

5. . Did HSBC (MM) and M&T and their respective attorneys Mr. Scott Miller Esq. and Ms Cheryl Storie Esq. violate the criminal laws, the fiduciary duties of the above named banks , U.C.C. Sections 3 and 4 addressing banking malfeasance, the Rules of Professional Conduct for Attorneys, and among other show gross disrespect for law and the courts?

6. Despite the astonishing and outrageous legal perversions of the past 20 years has Petitioner prevailed in all the lower courts and three appeals (possibly four) that produced written opinions?

7. Was the Appellate Court's sudden and unexpected dismissal of Petitioner's claim based on bias, retaliation and punishment for publicly noting the criminality , mendacity, ignominy, as well as depraved exploitation and waste of judicial resources by the Respondents who hold iconic status and campaign contributions in Western NY State , and was the U.S. Constitution offended?

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Respondents HSBC BANK is an International bank full name Hong Kong Shanghai Banking Corporation that through an entity known as HSBC USA Bank acquired Marine Midland Bank a few years ago, and located their headquarters in Buffalo, New York in the building formerly known as the Marine Midland Tower , now renamed HSBC Tower. HSBC USA Bank is a full service bank offering commercial and personal loans, mortgages and credit cards. They have branches in many parts of the country.. In a more recent press release HSBC USA Bank announced that they "planned to invade the California market", and that they were planning to acquire Asia Bank and the Bank of Bermuda.. HSBC is publicly held and the shares are publicly traded.

Respondent M&T Bank -Manufacturers and Traders Trust Company is headquartered in Buffalo New York, and is a full service bank with branches in many parts of the country. Under the "brand ownership" of M&T there are the credit card division, commercial loans entity, and others. M&T Bank is publicly owned and the shares are publicly traded.

Submitted

Dr. Petri Schafler

TABLE OF CONTENTS

Questions Presented	i
Rule 29.6 Corporate Disclosure Statement	ii
Table of Contents	iii
Table of Authorities	iiiii
Jurisdiction	1
Decisions below	1
Constitutional and Statutory provisions involved in the case	1
Statement of the case	1
Statement of relevant Facts	2
(a) Background	2
(b) The criminal activities	3
(c) Embezzlement , theft, conversion , lies, money laundering , unbridled criminality	4
(d) The racketeering conspiracy by respondents .The embezzler had an extensive, nefarious relationship with both these rogue banks.	5
(d)(1) Marine Midland bank now HSBC bank USA	5
(d)(2) Manufacturers and Traders Trust Co. bank	6
(d)(3) Requesting the return of the stolen funds, and refusal. The arrogance and fraud of the mscreants, Negotiations	7
Decisions below: Introduction	8
The Complaint: Mr. Miller Esq lying to the first Court	8
Mr. Miller Esq. lying to a second Court	9
MM's continuous suborning of perjury and deceit	10
The first Appeal	10
Another Order (second) affirming Petitioner's rights, holding Respondents liable	10
Another major scam and fraud on the Court by Respondents	11
A second appeal, and Petitioner prevailed again	12
Respondents further shenanigan, the path to another appeal.	13
Appeal number three, Petitioner prevailed again	13
Mouradian v Astoria Fed Sav & Loan 689 N.E. 2nd 1385(1997), NY Court of Appeals	14

The lower Court pleadings: summary judgment 15
The Appeals 17
Reasons for Granting the Writ of Certiorari 18
I. The Supremacy Clause : Article VI , Sec 2 of the United States Constitution 18
(1)(a) The instant case is Federal in nature albeit pursued in State Court. It was wrongfully vacated. 18
(1) (b) This Court is the appropriate venue to review this matter 18
(1)(c) Pursuant to the Rocker-Feldman Doctrine , this is the only Court to review , and correct the error. 18
II The Uniform Commercial Code 19
UCC Conversion 3-419
Damages 19
Awarding punitive damages 20
III Article I, Sec 8 of the Constituion. Respondent's misdeed and the Commerce Clause 20
Assessing fee for bad faith conduct 21
Chambers v Nasco Inc.
IV Petitioner was denied Procedural Due process and equal protection 23
V. The dismissdal was in error, is irrational , is is Constituionally infirm , violates the 14th Amendment , Civil Procedure , and is based on a brew of serial perjury , lies, deceit and jducicial bias. 24
(V)(1) Summary judgment is abridged adjudication, therefore can be in conflict with due process requirements 24
(V)(2) The dismissal was based on fraud , serial perjury and lies stitched together by HSBC Bank USA that have been previously disregarded 24
(V)(3) Even in a court that loves them , Respondet's claim is res judicata , has been for almost 20 years , and they were collaterally estopped from using this defense. 25
(V)(4) Bias and Retaliation 25
(V) (5) Gender bias and Lococentrism 27
(V) (6) The public interest 27
(V) (7) The interset of jsutice 27
Conclusion 28

TABLE OF AUTHORITIES

Constitutional and Statutory Provisions

United States Constitution Article I , Sec.8	20
United States Constitution Article I, Sec.10	20
United States Constitution Article VI, Sec.2	18
U.S. Const Amendment V	23,24
U.S. Const. Amendment XIV	23,24
U.S. Code Title 12, Banks and banking	28
28 U.S.C. # 1257	1, 18
Fed. Rule of Civil Ptrocedure	25
Uniform Commercial Code 3-419	19
U.C.C. 3-419 (1) (2)	14, 19
New York DRL #236	5
NY Jour. 2d Damages (1st ed #12)	19
Ashare v Mirkin, Barre Saltzstein & Gordon 435 NY2d 438 (1980)	19
Bankers Trust Co v Island Discount Corp. 158 NY2d 715 (1956)	19
Bennet v Lockwood , 20 Wend 223	19
BMW of North America v Gore , 517 U.S. 559	20
Board of Regents Roth , 408 U.S. 564 (1972)	23
Bush v Gore , 531 U.S. 98 (2000)	23
Carr v Natl. Bank & Loan Co. 189 U.S. 426 (1901)	21
Cellotex Corp v Catrett , 477 U.S. 317 (1986)	24
Chambers v Nasco 501 U.S. 32 (1990)	22
Costello v Oneida Natl Bank & Trust Co 485 NE2d, 239 (1985 4th Dept)	19
Fargo National bank v Massey Ferguson Inc. 400 F 2nd223 (1968)	21
Fishkill Sav. Institution v National Bank of Fishkill, 80 NY 163 (1880) 10 Am. Jur 2d Banks #111	21
Goldberg v Kelly , 397 U.S. 254 (1970)	23, 24

Gondek v Pan American World Airways, 27
370 U.S. 918. 371 U.S. (1962) 382 U.S. 25 (1965)
Massachussets Gen. Motors Acc. Corp v 19
Abbington Cas. Ins. Corp 602 NE2nd, 1085(1992)
McDonald v North, 47 Barb 530 19
Manekas v Allied Discount Co. 20
166 NYS 2d 366 (1957)
R. Mars Contract Co v Massamutten Bank of 21
Strasburg , 285 F. 2nd 158 (1960)
Mercantile Nat.Bank v Langdeau , 18
371 U.S. 533 (1963)
Mouradian v Astoria Fed Sav.&Loan 14
689 N.E.2nd 1385(1997)
Perry v Sinderman , 408 U.S. 593, (1972) 23
Rock v Belmar Contract. Co 252 NYS 463 (1930) 20
Rocker v Fidelity Trusts Co , 18
263 U.S. 413 (1923)
Ross v Moffitt , 417 U.S. 600 (1974) 18
Schaffner v Pierce , 347 NY2d, 411 (1973) 19
Smith v Philips , 455 U.S. 209 (1982) 18
Summer v Marine Midland bank 227 AD 2nd , 12
932, 643 NYS 2D, 256 (App 1996)
State Farm Mutual Inc v Campbell 20
155 L.Ed 2d 585 (2003)
Tumey v Ohio , 273 U.S. 510 (1927) 26
U.S. Commonwealth Fed. Sav. & Loan Ass. v 19
First Natl. Bank, 513 F.Supp 296 (1979)
United States v Lopez 514 U.S. 549, (1995) 20

JURISDICTION

This Court has jurisdiction in this case pursuant to 28 U.S.C. # 1257 as well as other Constitutional provisions

THE DECISION BELOW

The decisions below are unpublished and unexplained . A timely filed motion for permission to appeal was denied by the New York Court of Appeals on February 14, 2006. On Nov. 10 2005, the App. Div Fourth Dept. of NYS Supreme Court vacated and dismissed it's own previous judgments in Petitioner's favor.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

The following are the constitutional and statutory provision involved in the instant matter: Article I, Sec8, Article VI Sec. 2, Amendments V and XIV all of the United States Constitution , U.S.C. Title 12,: "The laws on Banks, banking and fiduciary responsibilities " UCC 3-419 and other, NY. DRL 236 and other NY State rules .

STATEMENT OF THE CASE

On November 8, 1985 Petitioner had her $95.600 embezzled , stolen, converted and laundered through a racketeering criminal forgery conspiracy by the Respondents. Thereafter these grotesque arrogant, deceptive malfeasants exploited and degraded the judicial system and the judicial system's ability to validate Petitioner's rights, by a 20 year choreographed kabuki of serial perjury, shameless and brazen lying , extending their criminal acts of embezzlement, theft and betrayal of fiduciary duties further through numerous false and frivolous judicial hearings and pleadings: "the stolen funds are here , there , waiting for another decision " , through six courts, and three frivolous appeals. On Dec. 26, 2003 through Respondent's documents Petitioner's belief was confirmed: the embezzled funds were laundered at Respondent's banks: by prearrangement depositing the two forged checks and several days later the funds were removed cleansed. The 20 years of litigation were theater by corrupt ,depraved individuals. For exposing this malfeasance and criminality by these iconic NYS fiduciary institutions and their attorneys-officers of the court, albeit lying ones, Petitioner was retaliated against, and her claim-after 20 years of affirmation -was suddenly dismissed.

STATEMENT OF RELEVANT FACTS

On N 7, 1985 , in a conspiracy including two federally chartered iciary institutions namely M&T Bank , Marine Midland Bank, now HSBC Bank USA and D. Summer, all located in Buffalo New York, embezzled, stole and laundered two forged checks in amount of $79.600 and $16.000 belonging to Petitioner , with her as payee , without her endorsement.(App) which had been removed from an account at Merrill Lynch et al This crime was planned in detail by the coconspirators to prevent Petitioner from learning of the theft and to maximize the potential of her never being able to trace the crime and recover her funds.

Subsequently, even though the facts and the laws on forged checks, theft, embezzlement and money laundering are quite clear and on point, the Respondents nevertheless refused to indemnify petitioner. Instead the two institutions, and their attorneys: Mr.. Scott Miller Esq . house counsel for MM bank, and Ms .Cheryl Storie counsel for M&T while exploitatively cloaking themselves in the trust that one has in banks, and the perception that attorneys are officers of the court and take an oath to be truthful , embarked on a 20 year crime spree of fraud, racketeering deceit, serial perjury , brazen lies , filing false paper , repeatedly lying to the tribunal ,treating the lower courts as if they were employed retainers. there to serve them. Respondent attorneys were fully aware of their conduct , and their immersion in criminality.-it had become a sport. This 20 year criminal "sport" carried through six judges, four appeals., seven law firms that had represented Petitioner, an enormous waste of time, resources, harm to petitioner and shame to them.

(a) Background

The second name on the stolen, forged check Donald Summer, is a former spouse , who had no interest in the funds in the account, and his name had been added for convenience only - which he knew. Petitioner and Summer , married in 1967-a second marriage for both to which petitioner brought two young children, and separate assets. In the subsequent decade these assets grew through inheritances from her family. Summer had no assets outside the marriage, but he was a full partner in a large law firm in Buffalo, providing a very nice lifestyle for the family

Petitioner had always kept her non marital assets in her name and separate, to use for her children if needed. In the early 1980ties some major concomitant events occurred which lead to Donald Summer's name being added to the account at Merrill Lynch , all without donative intent, and so made clear. In late 1982 Summer was suddenly expelled from the law firm for defrauding the partnership , pocketing legal fees and other misconduct. While this was sudden for Petitioner, it was the result of a multi year inquiry. This expulsion left the family without a reliable predictable source of income. Concurrently Petitioner had been diagnosed with a life threatening illness and she traveled for treatment to major medical facilities. As a member of the law firm , the children's needs would always be met , but this having ended ,other provisions for them needed to be made.. Therefore Petitioner added the name of D. Summer to the account of her funds at Merrill Lynch. Petitioner continued to manage the account, transact business, and maintain the check book.

(b)The criminal activities

Shortly after the above described events D. Summer decompensated and degenerated into a life of crime, of cocaine dealing with gangsters,(1) prostitution, money laundering, stolen cars, stolen boats ,insurance fraud, bank fraud converting clients funds (2) forging their names and identities, filing false financial statements, tax fraud and being a target of the New York State Organized Crime Strike Force .Almost everyone he was involved with was either currently in prison, on the way there or unindicted cooperating felons. In this life of crime Summer had two very amenable cooperating banks: M&T and Marine Midland now HSBC bank. , where he laundered all his illegal funds along with the ill gotten gains of others . Petitioner informed Summer that she was planning to divorce him, a more cumbersome act in NY State than in many no fault jurisdiction.

(1) D. Summer with his criminal associates had used the marital vacation home in Florida to bring cocaine to Buffalo NY, in pizza boxes.

(c) Embezzlement, theft , conversion , lies, money laundering, unbridled criminality.

Like many criminals, Summer extended his immersion in deviancy. In October 1985 he went to the Buffalo Savings bank where petitioner had a certificate of Deposit for $101.000 and persuaded a clerk to add his name to the account, which the clerk did. But within days , the error was detected and he was notified that this was an error , and he would not have been able to access these funds. His criminality failed him. (App) The Merrill Lynch monthly statement arrived monthly on the fifth day . On Nov. 5 1985 the account held $116.159 in cash and securities. (App) The December statement was hijacked by Summer from the post office. Having been away over the holidays, Sat Jan 12, 1986 was the first opportunity to read all the mail. Horror struck: the Merrill Lynch account held $5.500.Suspecting error first , it took several days to unravel the facts: After the November statement , on November 7, 1985 Summer presented himself at Merrill Lynch, told a lie that Petitioner had asked him to immediately retrieve $100.000 for an investment , and she forgot to give him a check. Merrill Lynch encoded two checks on their drawee bank , which is Respondent M&T. All the cash in the account amounted to $95.600 and he received two checks one for $16.000 and the other for $79.600.The Checks were titled to Pepi Summer and Donald Summer.(App)By prearrangement Summer took these checks directly to Respondent MM bank endorsed them to himself and deposited them without Petitioner's endorsement. The $79.600 was deposited in an account titled "Attorney trust" account. These checks were "laundered " at MM, and the funds were removed 13 days later. Respondent M&T also participated in this criminal conspiracy and honored these forged checks.

(2) Eventually Summer faced a disbarment proceeding in which Petitioner testified as a witness, and he was suspended for 6 month. , and ordered restitution to the Bar Ass. in amount of $90.000They have a fund that comes from members and their dues which compensates victims of attorney fraud and theft. One victim died before he could collect h the $60.000 from him.

(d) The racketeering conspiracy by Respondents The embezzler had an extensive nefarious relationship with both these rogue banks.

(1)Marine Midland bank now HSBC bank USA

The extensive perfidy of money laundering and other illegal financial activities by Summer at MM bank was an ongoing process. The negotiating of the forged check and laundering of same at MM bank, was planned and prearranged there as D. Summer had "theft, fraud and we cover up for you privileges" there. Commerce in stolen cars, boats insurance fraud , cocaine revenue, checks cashed in non existent names, transactions absenting authenticity, transforming large checks to cash, in defiance of a court order, were all transacted at MM bank, now HSBC D. Summer also had numerous bank accounts there, without any, or with fake identification which in fact were marital accounts and Petitioner had a right to them. NYS Domestic Relations Law #236 holds that all property during the marriage is marital, except property from prior to, inheritance, or written agreements. At the time of marital dissolution the court has the authority to apportion. It is a measure of the relationship of D.Summer with MM bank that even though all the accounts at MM were marital, D.Summer felt that to obtain household funds, or review an account it would require a power of attorney for Petitioner which was arranged for. (App)The parties did have a joint credit card account in separate names. by MM bank.

When Petitioner attempted to review the records of the account as per the power of attorney . MM bank created a two month run around and a series of brazen lies -this "fiduciary " institution can generate lies faster than a street gang-and then pressured Summer to withdraw the power. Petitioner's counsel filed a complaint with the Comptroller of Currency (App) part of the United States Treasury Dept. who advised the president of MM bank, who took no action.

D. Summer had forged petitioner's name on the joint tax return did not pay the taxes , and the unpaid household bills had piled up. On Jan. 13, 1986 unrelated and before knowledge of the theft of her funds through forgery, where negotiated and laundered , Petitioner used one of her loan check to obtain $10,000 in her name and the valid power of attorney to access the marital bank account and wrote a check for $22.000 also in her name.(App)

(2) Manufacturers and Traders Trust Co. Bank.

Respondent M & T bank had an extensive business relationship with D. Summer. They were involved with him and others in a real estate transaction: the conversion of a large hotel in Buffalo NY into an office building. The relevant facts are that Summer misappropriated and converted hundreds of thousands of dollars from the project , paid off lovers (App) used one floor that had appropriate facilities to provide cocaine and prostitutes to many. Since these benefits were also provided to numerous employees and officers of M&T bank , they most likely were not going to challenge or even notice a forged check. Many members of the M&T community were being compensated in a currency they liked a lot. Even after the instant embezzlement, forgery and theft and they continued to negotiate his forged checks at M&T bank. (3)

The evidence is overwhelming that Respondents M&T bank and HSBC Bank USA the former Marine Midland bank, despite their being fiduciary institutions, are de facto rogue institutions, not to be trusted because they have been corrupted. Their legal representatives, Ms. Cheryl Storie Esq. for M&T, and Mr. Scott Miller Esq for MM bank now HSBC bank USA are mendacious, and ignoble . Mr. Miller Esq. is an uncommon miscreant, liar, and shameless serial perjurer. The embezzlement and laundering of petitioner's funds was a planned criminal act in a racketeering conspiracy by all three malfeasants .The wrongdoers saw this as an opportunity to compensate Summer for nefarious favors provided without using their own funds. They also felt secure that they are accomplished , sufficiently brazen and exploitative liars , in a community that favors them and therefore Petitioner will never prevail against them.

(3) several years after the present incident of theft, Summer continued to negotiate forged instruments at M&T bank. after such an incident , Petitioner had been contacted by a drawee bank regarding a transaction that Petitioner had no knowledge of, though her name had been forged. After verifying the facts, within a short time, an M&T bank employee came to petitioner's office to deliver the funds. .

(3) Requesting the return of the stolen funds, and refusal. The arrogance and fraud of the miscreants. Negotiations.

To fully appreciate the facts of this matter , they must be viewed through the prism of sordid massive malfeasance ,of lies , fraud and money laundering The stolen and converted funds were negotiated and laundered within days of each act i.e. steal, negotiate and launder at MM bank, now Respondent HSBC bank USA, within 14 days. (App) Yet for 20 years they have engaged in theater of the depraved ,impaired, exploitative, and evil pretending otherwise. Petitioner did not learn until January 12, 1986 of the theft of her funds on Nov. 7, 1985, not until Jan. 18 , 1986 that the forged checks had been negotiated at MM bank and not until Dec. 26 2003 that the funds have been laundered there and removed at once for parts unknown..(App) On Jan 22, 1986 Petitioner met with Mr.John Trasher a vice pres. at the bank ,(App)explained the theft and fraud , and requested that the funds be returned to Merrill Lynch,which would permit any party to prove ownership. He said they would not. When Petitioner challenged his attitude, reminded him of the law ,and that MM bank is a federally chartered fiduciary institution, and that they may not act like street thugs, Mr. Trasher replied: "look we do this all the time, get yourself a lawyer." . Petitioner had a lawyer. (Mr. Trasher as a bank officer , knowingly signed under oath many perjured documents, and affirmed swindles).

Thereafter Petitioner's lawyers had numerous communications with Respondents, but of course counsel did not know at the time that the funds were gone through laundering. Respondents were arrogant and defiant with an attitude of :"yes we did it, we will not comply with the law , and do what you can." In later encounters Petitioner's attorneys were taunted with "I can do things that you can not" It was erroneously assumed this was in reference to legal fees.. This Was about their constant, malignant pathological lying, and deceit And exploitation of the courts. On September 1, 1996, Petitioner had filed for the marital dissolution , which took 7 years to obtain. The NYS divorce laws are cumbersome and can be a burden .In June 1987 Petitioner filed suit in New York State Supreme Court against Respondents, seeking restitution damages in amount of $95.600,legal costs ,$250.000 in punitive damages , interest , and other relief. (App).

DECISIONS BELOW
INTRODUCTION

On November 7, 1985 Respondents Marine Midland bank now HSBC bank accepted two forged checks of Petitioner's funds in amount of $95.600 and laundered the funds 13 days later, these predicate acts satisfied the plans and requirements of the RICO conspiracy by the Respondents These were wrongful act covered by statutory accour ability. What followed were 20 years of criminal acts of covering up, of fraud , deceit, serial perjury , grotesque lies, gross , brazen and shameless exploitation of the judicial system. These acts of malfeasance are suited to street criminals and mob gangsters , and not to a federally chartered fiduciary institution and perpetrated by "officers of the court" Their malfeasance were statutory crimes Not until December 26 2003 did the full measure of Respondents depravity and perversior become known.

THE COMPLAINT.
MR. MILLER ESQ. LYING TO THE FIRST COURT

The learning that Petitioner's stolen money had been deposited at MM bank, now HSBC bank led to innumerable requests by her and her counsel, to return the funds to the Merrill Lynch account from which it was removed.. All were refused, and the refusal accompanied by another story all mendacious ,all to no avail. Therefore in June 1987 suit was filed in NYS Supreme Court against the Respondents seeking restitution damages, of $95.600, punitive damages of $250.000, legal fees and other costs. (App) Respondents MM bank now HSBC bank , through house counsel Mr.Scott Miller Esq. in a verified reply under oath ,affirmed by a bank officer (vice pres. Mr. John Trasher) stated that the embezzled and stolen funds are in repose in the accounts in which they were deposited the check for $79.600 is reposing in Summer's " attorney trust account" and the $16.000 in another account .(App) As it is now known by all,- but at the time only by the perpetrators -this was all perjury and lies. MM. bank also impleaded Summer, to have another lying crook and perjurer to back up their deceit. (App) This claim was filed after the Sept. 1, 1986 filing for divorce

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The court, Supreme Court Judge J. Forma ruled (App) that Marine Midland bank is liable to Petitioner, dismissed other extraneous pleas to the court , ordered that the matter at instant of the forgery and theft be determined in a proceeding after the action for divorce is determined , and that in the interest of judicial economy the present matter be transferred to the judge hearing the action for divorce , Supreme Court Justice George Francis.

MR. MILLER LYING TO A SECOND COURT

After the transfer to Justice Francis both Respondents had new fertile ground for lies. to the court. There were several hearings and meetings in chambers with Judge Francis , Petitioner's counsel , Mr. Miller Esq , and Ms. Cheryl Storie Esq. There were shenanigans by Respondents one or the other would be unavailable, one or the other would not agree. to what the others had agreed to. Since Justice Francis was told that the stolen funds were in repose in the respective accounts they were deposited in , he felt that the funds should be transferred into a separate account under the court's control until the divorce is granted and thereafter as per Judge Forma's order the damages should be decided. He did not know how brazenly he was being lied to

In the "Special Term Note of Issue." Justice Francis wrote: "If parties won't settle on this basis then : (1) grant Pepi's motion for s/j as to liability against banks (App) . Of course there was no settlement and after three years of brazen lies and shameless deceitful shenanigans by the outrageously ignoble attorneys for the Respondents -Ms. Storie and Mr. Miller -Judge Francis issued his order.

On March 18, 1991 Judge Francis found Marine Midland Bank , now HSBC Bank, and M&T Bank liable to Petitioner, with damages to be assessed at a trial after the divorce is granted Thereafter, some more shenanigans , alleging that counsel for Petitioner submitted the order for signature late. The lower court did not agree with that , but M.M. and M&T did and they appealed.

MM.'s CONTINUOUS SUBORNING OF PERJURY AND DECEIT

In addition to the perjury by M.M. bank now HSBC Bank , Respondents repeatedly and persistently suborned the perjury and deceit of their racketeering coconspirator Donald Summer presumably relying on the idiom that two liars are better than one. This was disrespectful, outrageous and really unacceptable.

THE FIRST APPEAL

It is no longer material to note what the issues were in the first appeal, because Respondents changed their mendacious tales frequently. The Appeal was obviously frivolous and deceitful ,because anything Respondents had to say in this matter was a lie. On February 5, 1993 Petitioner prevailed in this appeal which as filed on September 16, 1992.(App)

ANOTHER ORDER AFFIRMING PETITIONER'S RIGHTS HOLDING RESPONDENTS LIABLE

On February 22, 1993 , Justice Robert Whelan , substituting for Justice Francis , issued a detailed summary judgment order in this matter (App)

ORDERED: that the Plaintiff's Motion for Summary judgment against the Defendants. Marine Midland Bank N.A. (HSBC Bank USA) and Manufacturers and Traders Trust Company be and the same is hereby granted, and it is further

ORDERED , that a hearing on the assessment of the Plaintiff's damage as claimed in her Complaint , shall be held immediately after the conclusion of an equitable distribution hearing scheduled in an action pending in this court titled Pepi S.. Summer Plaintiff v Donald Summer Defendant.

The rest of the Order denies the consolidation of this matter with the action for divorce sought by all the Defendants. Signed, Robert E Whelan ,Justice of the Supreme Court.

ANOTHER MAJOR SCAM AND FRAUD ON THE COURT BY RESPONDENTS

After a 12 day trial in September and November 1992 a judgment of divorce was finally granted on March 17, 1993. Justice Francis who was to conduct the divorce trial was busy, so a JHO, Judge H.B. Roberts was appointed to do so. His assignment : the trial only. He had no knowledge of the "bank claim" and the attorneys were enjoined by the order of the court to mention it. The court made a finding that Summer co mingled his attorney trust account with personal funds using it all as his piggy bank, therefore petitioner is entitled to 50% of the amount of money in the account as of the day the action was filed, September 1, 1986.(App)

This was appealed by Summer, but nothing changed .After the appeal Summer and respondents M.M. Bank now HSBC Bank , Mr. Scott Miller Esq. and M&T bank and Ms. Storie Esq continued the predicate acts of racketeering and filed motions for a hearing to close this embezzlement case, alleging that since petitioner was awarded 50% of the so called attorney trust account as well as other accounts , and since these accounts held the stolen checks, petitioner has been compensated. They filed serially perjured affidavits alleging that the funds were there in the accounts .(App)

There was a new judge Supreme Court Justice Joslin, and petitioner was in the courtroom at this proceeding. Mr. Miller told so many lies about the case, about other judges about what has been done, that JHO Roberts had already adjudicated this matter. There are about 5 pages of transcript from that hearing, that should suffice to remove Mr.Miller Esq. from ever being an attorney. Between these ignoble pathological liars of Summer and Miller ,they bamboozled the court , and Judge Joslin dismissed petitioner's claim because JHO Roberts had already decided this matter and distributed the accounts in which held these funds (App)This despite the best efforts by petitioner's counsel. Three liars and perjurers and crooks presenting the same fraud and deceit at the same time persuaded the court.

THE SECOND APPEAL, AND PETITIONER PREVAILED AGAIN

Petitioner appealed Judge Joslin's decision and prevailed again in a reported decision dated May 31, 1996 *Summer v Marine Midland Bank 227 AD 2nd , 932 643 NYS2D256* (App)
In the decisional sentences the court said that the lower court erred in dismissing the claim. Thereafter the court 's decision is slightly muddled in it's holding stating that since the divorce court held that petitioner is entitled to 50% of the accounts in which the stolen funds have been deposited-the court did not yet know that the stolen funds have been laundered only, therefore Petitioner is entitled to 50% of the converted sum.(4). The Court further held that Petitioner's damages are to be assessed by the court, and that the lower court should be mindful in it's decision of the time elapsed : at the time it was eleven years. The case was returned to Judge Joslin.

This decision has remained the law of the case until the recent dismissal, although there had been another appeal in between, possibly even two. Petitioner prevailed. This decision makes the recent dismissal appear much more twisted and perverted ,based on favoritism , more biased , retaliatory and punitive , for publicly disclosing the "secret life" of these fiduciary institutions, HSBC Bank USA , and M&T and their representatives that enjoy iconic status in Buffalo , New York.

(4) When the cash funds were removed from Merrill Lynch, there remained in the account of securities worth $5.600. When the action for divorce was filed this remainder account was frozen to await further disposition. JHO Roberts was asked to adjudicate all the issues between parties , and there was this Merrill Lynch account which had grown to $51.200. Since the parties and their lawyers were enjoined from mentioning anything about this account or the "bank claim", the court placed the account in the 50/50 split column. The Appellate Division acknowledged in it's decision that the Merrill Lynch matter could not be brought up in the divorce trial because of the orders by the court, but at the same time assigned judicial fact based finding and value to the court splitting the remainder of this account 50/50.Therefore when the court said that the Marine Midland account was valued 50/50 and likewise the remainder Merrill Lynch account, therefore petitioner's entitlement is limited to 50% of the stolen money.

RESPONDENTS FURTHER SHENANIGANS
THE PATH TO ANOTHER APPEAL

Post reinstatement of the claim , counsel for petitioner and Justice Joslin sought to bring this matter to a conclusion but to no avail. The exploitative, perjurious, corrupt ,mindless legal gyrations continued, and at one point respondent M.M. and counsel Mr. Scot Miller Esq.. demanded that Petitioner submit to a deposition by Summer.. Summer was not a party to the proceedings, nor a party in interest and the court issued a protective order.. Respondent M.M.and counsel Mr. Miller Esq objected to the protective order, and appealed.

APPEAL NUMBER THREE
PETITIONER PREVAILED AGAIN

Petitioner had left New York State in 1995 for Bethesda, Maryland and after a few years for the San Francisco Bay area. of California. Petitioner's counsel had filed a motion on October 7,1997 to dismiss this appeal as being frivolous and on April 6, 1998 the Appellate Div. dismissed . for that reason While petitioner does not have evidence in her records , but believes that Respondent MM now HSBC Bank had appealed this issue again which appeal succumbed due to neglect.

Additional fraudulent , deceptive legal gyrations by respondents were followed by several changes. Marine Midland bank was taken over by HSBC bank, petitioner finished law school and took over her legal representation., and Justice Joslin retired. The replacement judge had a conflict with respondents, hence a default choice was Justice Patrick NeMoyer , a long time political figure and office holder in the Buffalo area , who had been the financial officer for the city or the county among other who was either elected or appointed to the court. .He was as displeased with this assignment as Petitioner. He had long term ties to the Respondents and certainly did not want to rule against them. while Petitioner was concerned that he would be biased in their favor, and therefore Petitioner would be severely disadvantaged. .Judge NeMoyer demanded a personal appearance by Petitioner-no teleconferencing- to ask some questions- primarily why him for this old case.

MOURADIAN V ASTORIA FED. SAV.& LOAN
689 N.E. 2nd 1385 (1997)
New York Court of Appeals

The law of the case in the instant matter was determined by the Appellate Decision dated May 31 , 1996. However a case very much on point with the instant one was decided by the New York Court of Appeals on December 17, 1997 which is applicable to the instant one, and superseeds the previously held law of the case. The Court of Appeals held::

" Payee of jointly payable checks brought conversion action to recover face amount of checks after payee's estranged husband forged her name. Payee moved for summary judgment. The Supreme Court , Nassau County , Alpert , J. entered judgment for payee, and bank appealed. The Supreme Court , Appellate Division , 236 A.D. 2d 451, affirmed and drawee bank appealed. The Court of Appeals , Ciparick , J held that while drawee may claim setoff for funds actually received by payee, rule of absolute liability precludes further inquiry into whether payee who has not recovered any of the funds , in fact benefitted from proceeds of the checks. UCC3-419(2) Rule of absolute liability precludes further inquiry into whether the payee who has nor recovered the funds , in fact benefitted from the proceeds. Affirmed."

The fact pattern of *Mouradian* is that the estranged husband of the Plaintiff forged her signature on three joint name insurance checks in amount of $37,890.60 payment for fire damage at their jointly owned home, and he claimed he used it for home repairs from whicl his wife benefited as well. The court took notice that Plaintiff had n control over the funds, or the work performed. The court also noted that "the rule of absolute liability does not prevent a settoff where a party is put in an as good positions as before the embezzlement, but this was not possible because the funds were gone".

This holding is applicable to the matter at instant: Respondents had numerous perjured statements such as "the stolen funds are her there, Petitioner has received them through her credit card,20 years ago, through marital maintenance, and other. The current dismissal is based on such outrageous lies by Respondents.

THE LOWER COURT PLEADINGS
SUMMARY JUDGMENT

Before proceeding in state court, petitioner attempted to remove the case to Federal Court, an act highly desirable but procedurally not sustainable All that was remaining in the instant matter was summary judgment , damages ,fees and interest Petitioner filed several pleadings to Judge NeMoyer ,which were all denied. One pleading pointed out that *Mouradian* is 100 % applicable in the present matter because of factual and procedural reasons it is now stare decisis. Had all the lies , the fraud and serial perjury by Mr. Miller Esq, that he presented to the courts leading to the Appellate decision of May 31, 1996 been true , the Appellate Court was still deceived in awarding Petitioner only 50% of her money due her, because she had received 50% credit for those accounts. Judge NeMoyer disagreed , and said "look you are going to receive the minimum $47.600 as per the appellate decision of May 31, 1996 , and that is all for you"

On October 10, 2003 Petitioner filed a motion for summary judgment , which was amended on November 1, 2003 in which petitioner sought the full amount of the embezzled and stolen funds, $95.600, punitive damages, legal fees . HSBC Bank USA requested and of course was immediately granted a seven month adjournment, "to find a defense" which is quite bizarre , and despite Petitioners objections. It was a foregone conclusion that they would be granted any request they made .Judge NeMoyer ignored Petitioner's suggestion that the HSBC employ the defense that Marine Midland was going to use on November 7, 1985 when the funds were embezzled

On December 26, 2003 in response to a routine discovery request , through the documents provided, Petitioner learned that all the 18 years of proceedings in this matter have been a farce, fraud , deceit, shameless lies, predatory and disrespectful exploitation of the courts and judicial system, predatory , scummy criminal and malignant exploitation of this Petitioner , fraudulent exploitation of the seven law firms that had represented her, engaging in RICO activities , and prostituting the legal profession, because the records indicate (App) that the stolen checks were laundered at MM bank and removed for parts unknown 13 days after deposit..

It is disturbing to note that someone who is so dishonest, so lacking in morals and ethics , so disrespectful of law, the legal profession, and the legal institutions, like Mr Miller Esq. whose job should really be a prison cell, is chief legal counsel for a fiduciary institution. Do they know ?

When the court gave respondent HSBC bank an additional seven month to find a defense, he knew with 100% certainty that no meritorious defense was possible. After Dec 26, 2003 Judge NeMoyer had been notified that the stolen funds had in fact been "laundered"at Marine Midland bank and immediately removed for parts unknown. Therefore , the 19 years of racketeering , judicial exploitation and lying were a crime. Therefore the court also knew knew that for any new defense they would have to rearrange the old crimes. But it appears that Judge NeMoyer did not want to be known as the one who would deny any request HSBC and the law firm that represents them.. Petitioner filed a motion for Judge NeMoyer to recuse(App) because of his bias and long term ties to Respondents. HSBC 's counsel urged him not to. This was highly improper for the beneficiary of the favoritism that the Judge is accused of. to intervene, as the Judge is an adult who is able to represent himself .Nevertheless citing this advise-hence no recusal.

On May 18, 2004 the court announced that petitioner would be granted summary judgment consistent with the order of May 31, 1996 providing 50% of the original sum stolen and the statutory interest .(App) The other was all denied. . Respondent HSBC who had intertwined several brazen lies and extensive serial perjury -they knowingly presented perjured and false statements which an attorney is not permitted to do - by which fraudulent perverted presentation , Petitioner had already been overcompensated. and unjustly enriched. . The court was very pleased, and told counsel that he agreed with that .position Counsel urged the court to dismiss Petitioner's motion . When the court explained hat he would like to , but is bound by the appellate order, counsel replied " you do not have to take this so literal" (App) An extremely uncommon occurrence in which an attorney feels free to tell a Judge that he does not have to comply with an order from a higher court .. The power of contemptible arrogance in those favored by bias. is never ending
Petitioner was granted summary judgment. (App)

THE APPEALS

Respondents appealed the judgment awarded Petitioner, and Petitioner cross appealed the award because it was only 50% of the stolen funds. Petitioner timely amended her cross appeal appealed the denial of damages, denial of legal costs, denial of punitive damages, and the denial of compounded interest, also moving to consolidate all these appeals. The Appellate Division denied all of Petitioner's (6) appeals , except the cross appeal to Respondent's appeal. (App) This Court requires a joint record on appeal which is certified by the lower court. There is no rule which party prepares the record: it is by agreement or the court makes the decision. The court decided that Respondent HSBC should prepare the record, and counsel decided the content of he record as well. This act by itself could not obscure the facts and the law of the case: Respondents embezzled and converted Petitioner's funds in a racketeering conspiracy scheme and for more than 19 years had engaged in every kind of criminal misconduct and exploitation of persons and institutions imaginable ,causing significant harm , all to deny Petitioner her funds .The record was filed at Respondents pleasure, and oral argument was delayed for seven month because counsel for HSBC was on holiday. Respondents prevailed (7). (App). Court of Appeals refused review, which is surprising in light of *Mouradian.* (App)

(6)) While at first petitioner was surprised by that , but upon further reflection the court had signaled it's new found loyalties, which were not in the law or the Constitution. There are new people n the court. During oral argument she recognized two men who had ties to Respondents . In the 7 month of the search for a defense , HSBC sought to examine Petitioner's divorce records and the appellate records to same, all of which is none of their business. Petitioner objected, but to no avail. Vis-a-vis HSBC and their law firm there are no privacy rights. Yet, when petitioner found out of the extensive fraud perpetrated on all the courts ,the appellate division included Petitioner filed a pleading , pointing out to the court the massive fraud and deceit by Respondents , and sought reconsideration. This was obviously out of time, but the expectation was that they would deny and say so. But it was different: the : court denied, but did not like the message therefore fined Petitioner $100.

(7) Counsel is part of a large law firm, others could have taken his place. As is this all appears prearranged. Counsel had only spoken for 2 min. and was stopped told by the chief judge "we know., yes ok" What did he know? Much more talkative with petitioner.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE SUPREMACY CLAUSE: ARTICLE VI, SEC.2 OF THE UNITED STATES CONSTITUTION

(a) The instant case is Federal in nature albeit pursued in State court, and it was wrongfully vacated

" The Constitution and the laws of the United States shall be binding on the States."*Art VI (2).* While the instant claim against the rogue banks has been pursued in state courts which vacated without cause, national banks are instrumentalities of the Federal Government and Congress. *Mercantile Nat. Bank v. Langdeau , 371 U.S. 555 (1963).*The respondents are fiduciary institutions chartered by the Federal Govt..are subject to the Rules of U.C.C. and the U.S. Dept. of Treasury. Therefore it was wrongly vacated. .

(b) This Court is the appropriate venue to review this matter.

The right to seek certiorari in this Court to review a state court judgment "is not granted by any State , and exists by virtue of federal statute *(28 U.S.C. #1257)* with or without the consent of the State whose judgment is sought to be reviewed " *Ross v Moffitt, 417 U.S. 600 (1974)* . As stated by Justice Brennan:

> "Crucial to the exercise of our certiorari jurisdiction is whether the issue in the state court case is federal , arising under the United States Constitution or under federal laws."

This Court extends it's Appellate Jurisdiction over state matters only subsequent to the exhaustion of state remedies as is the case in the present matter.

(c) Pursuant to the Rocker-Feldman Doctrine, this is the only Court to review, and correct the error.

Under the Rocker -Feldman Doctrine ,*Rocker v Fidelity Trust Co. 263 U.S. 413 (1923)* this Court held that under the legislation of Congress no court of the United States other than this Court could entertain a proceeding to reverse or modify a state court judgment for errors federal in character. In *Smith v Philips 455 U.S. 209, (1982)* this Court held that the main point of *Rocker-Feldman* is that the Court holds no supervisory power over state judicial proceedings , it may intervene only to correct wrongs of constitutional dimensions. The instant matter is thus.

II. THE UNIFORM COMMERCIAL CODE
UCC CONVERSION

Pursuant to UCC # 3-419 (1) an instrument is converted when:

(a) It is paid on a forged endorsement .A missing endorsement is the equivalent of a forged endorsement for the purpose of a UCC # 3-419 conversion suit. *Massachussets General Motors Acc. Corp. v Abbington Cas. Ins. Co 602 NE2nd 1085 (1992)* When a bank pays paper even though an endorsement is missing , the effect is the same as payment on a forged endorsement. Thus the bank commits conversion of the paper. *U.S. Commonwealth Fed. Sav. &Loan Ass'n v First Natl. Bank . 513 F. Supp 296(1979)* The Appellate Div, 4th Dept which vacated Petitioner's judgment did so by violating it's own precedents in the instant matter having affirmed the claim in at least three appellate decisions, but also another completely on point *Costello v Oneida Natl. Bank & Trust Co 485 NE2d , 239 (1985 4th Dept.)*

DAMAGES

(2) In an action against a drawee for conversion , the measure of the drawee's lability is the face amount of the instrument. Special damages, that is, those damages which arise from the special circumstances of the case and which, may be added to the general damages legally presumed or implied from the mere invasion of the Petitioner's rights, . *NY Jur. 2d Damages (1st ed #12)* may be recovered in an action for conversion..*Bennett v Lockwood , 20 Wend, 223.* Thus compensation for time and money spent in pursuit of the property converted, including attorney's fees, if they are the natural and proximate consequence of the Respondent's act of conversion may be recovered.*Bennett v Lockwood , 20 Wend 223, McDonald v North , 47 Barb 530. P*unitive or exemplary damages may be recovered for the conversion , where the circumstances show that the conversion was accompanied by malice, insult reckless and wilful disregard of the petitioner's rights, or other proof showing the aggraved nature of the act. *Ashare v Mirkin, Barre , Saltzstein & Gordon, P.C. , 435 NY2d 438 (1980) Schaffner v Pierce, 347 NY2d, 411 (1973), Bankers Trust Co v Island Discount Corp. 158 NYSd 715, (1956).*

(3) AWARDING PUNITIVE DAMAGES

The purpose of an award of such damages is not only to compensate for harm suffered by the plaintiff(petitioner) but to reflect punishment of the wrongdoer for the past event and to deter a tortfeasor from a repetition of the wrongful act. *Manekas v Allied Discount Co.166 NYS 2d 366 (1957)* This Court has held that punitive damages serve the same purpose as criminal penalties. *State Farm Mutual In. v Campbell 155 L.. Ed 2d 585 (2003).*In *BMW of North America Inc v. Gore 517 U.S. 559,* this Court upheld a punitive damage award of $2.000.000 on an $4.000 compensatory damage award. If punitive damages are sought for wanton and willful acts , the demand should be made in the complaint. *Rock v Belmar Contracting Co. 252 NYS 463 (1930)* . Petitioner did seek $250.000 in punitive damages, and after 20 years sought to increase that demand pursuant to the statistics of the CPI-Consumer Price Index, as provided by the United States Department of Labor Statistics, but the lower court rejected any attempt at that. There can hardly be a more meritorious and deserving litigant for a punitive damages awardthan Petitioner, nor more suitable candidates for the payment of punitive damages, than Respondents.

III. ARTICLE I, SEC. (8) of the CONSTITUTION RESPONDENT'S MISDEEDS AND THE COMMERCE CLAUSE

The matter at instant is an absolute offense and affront against interstate and intrastate commerce, and the above noted article of the United States Constitution. In *Lopez, United States v Lopez, 514 U.S.549 (1995)* this Court held that the possession of firearms in school zones , even in the aggregate are too peripheral to affect interstate commerce and for Congress to regulate them pursuant to the Commerce Clause. But the Present matter involving two banks , two rogue banks which are institutions regulated by the Federal Government possess

the necessary elements to affect interstate commerce. and commerce within the states. Respondent banks are national in character. In *Fargo National Bank v Massey -Ferguson , In. 400 F 2nd 223(1968), R.Mars , Contract Co v Massanutten Bank of Strasburg, 285 F 2nd 158 (1960)* and cases from many other jurisdictions, the courts have held that the banks are liable for the conversion of forged instruments , but also in tort for being negligent in not examining the forged instruments offered for negotiation.

" A bank holding out it's officers and employees as worthy of confidence should not be permitted to profit by the frauds they may thus be enabled to perpetrate in the apparent scope of their employment , nor will it be permitted to shirk it's responsibility for such frauds, even though no benefit may accrue to the bank therefrom Accordingly , the general rule is that a bank is liable for the fraudulent acts or representations of an officer or employee acting within the course and apparent scope of .his employment or authority. *Fishkill Sav. Institution v National Bank of Fishkill , 80 NY 163, (1880) 10 Am. Jur. 2d, Banks # 111.* If a bank officer in the apparent scope of his duties makes false and fraudulent assertions in reliance upon which a person acts to his injury , the bank is responsible therefore. *Carr v National Bank & Loan Co, 189 U.S. 426 (1901).*

The matter at instant that has offended the commerce clause, through rogue banks, and corrupt ,lying , crooks as employees and as officers also has all the elements for *Fishkill* and *Carr.*

(2) ASSESSING FEES FOR BAD FAITH CONDUCT CHAMBERS v NASCO INC.

When Petitioner filed her complaint she asked the Court for the legal costs of this proceeding. Through 20 years of litigation the legal fees paid by Petitioner to seven attorneys and their firms , have amounted to $65.000 -their names to be listed in the App. and all the Judges that had been involved in the present matter. This large amount of money for legal fees , does not include the costs of the self representation: such as about eight round trips from Northern California to New York State., and ancillary fees.

Chambers v Nasco, 501 U.S. 32(1990), is on point to the present matter .Justice White began stating his decision by saying that "the case started out as a simple action for specific performance of a contract, but it did not remain so."The same language is applicable to the matter at instant . When petitioner learned that her funds had been stolen and deposited at MM bank, and while she knew that this bank was considered a "dirty " bank involved in nefarious endeavors with criminals, she did not expect the depth of criminality and deceit by Mr. Scott Miller Esq.counsel for MM bank , now HSBC bank,and the other ignominious people and institutions involved. The language used by the District Court describing Mr. Chambers and his activities :" part of a sordid scheme of deliberate misuse of the judicial system" is 100% applicable to the present matter, with the addition of the arrogant exploitation of the judiciary: "mendacity and deceit" as sport. In the 20 years since the embezzlement , there is not a single pleading that is not serial perjury by Mr. Miller Esq. or lies and fraud. Current counsel has repackaged the lies and the perjury, for reuse. Petitioner strongly believes that Mr. Miller Esq. should be disbarred or suspended for awhile , as he brings shame and sordid criminality to the profession, and offends. It is not likely however, that in Buffalo NY someone will take the appropriate action against him, as retaliation could be career harming. While Mr. Miller Esq.'s conduct as well as his employer's meet all the requirements of criminal fraud and RICO prosecution, it is unfortunately too late for same NY State does not have extended time tolling statutes for prosecution of civil crimes.

M&T bank, MM Bank's now HSBC Bank's "sordid scheme of deliberate misuse of the judicial system"(*Chambers)*has intentionally and maliciously deprived Petitioner of a significant amount of money that had been needed over the years. At the time of the embezzlement and conversion , the $95.600 stolen were invested generating $11.500 per year, and the corpus of the investment would have tripled in a few years. Therefore Petitioner prays for a Writ of Certiorari which could lead to holding the malfeasants accountable.

IV PETITIONER WAS DENIED PROCEDURAL DUE PROCESS AND EQUAL PROTECTION

—— Petitioner's property interest in her converted funds and her damages have never been subject to a due process evidentiary proceeding because she has prevailed in the lower and appellate courts through summary judgment., which was also the order by which Petitioner's right to her property has been dismissed. In *Board of Regents v Roth , 408 U.S. 564, 1972.* this Court -Justice White held that a sufficient property interest requires a hearing before dismissal. While property interests are not created by the Constitution , but rather from independent sources such as law. or government agencies. Petitioner's absolute entitlement to her funds comes from law , the U.C.C. and from the courts. In *Goldberg v Kelly 397 U.S. 254 (1970)* the Court held that a due process proceeding, an opportunity to be heard must be provided. The Court also cited the grievous loss that the Goldberg's would suffer by losing benefits that ensure their survival. While Petitioner's loss is not comparable to the Goldberg's in it's effect on life, Petitioner's deprivation of the funds, and the extensive losses and fees are significant. In *Perry v Sinderman , 408 U.S. 593 (1972)* , in a different set of facts the Court also mandated an entitlement to a due process proceeding.

In *Bush v Gore 531U.S.98 (2000)* this Court held that under the Federal Constitution's Fourteenth Amendment the rudimentary requirements of due process and equal treatment, which is really fundamental fairness must be satisfied.

Until the dismissal without due process, petitioner's equal protection rights were largely impaired by the lies, fraud and serial perjury by Mr. Miller Esq. and MM Bank, now HSBC Bank, and M&T bank.

However the dismissal by the Appellate court is a brazen and outrageous exercise of due process and equal protection violations, all to benefit the friendships and cronyism, of the Respondents , local law firm and institutions . The lies presented are outrageous. The dismissal on a perjured brief almost appears prearranged and mindless.

V. THE DISMISSAL WAS IN ERROR , IS IRRATIONAL IS CONSTITUTIONALLY INFIRM, VIOLATES THE 14 AMENDMENT, CIVIL PROCEDURE, AND IS BASED ON A BREW OF SERIAL PERJURY, LIES DECEIT AND JUDICIAL BIAS

(1) Summary judgement is abridged adjudication , therefore can be in conflict with due process requirements.

The present matter has been repeatedly adjudicated through the process of summary judgment .This Court has held that summary judgment is appropriate when the moving party is entitled to same as a matter of law. *Cellotex Corp. v Catrett, 477 U.S. 317 (1986)* But in granting summary judgment each time , no full due process proceeding has taken place. The 14th Ammednment Sect 1 holds that "no person shall be deprived of life, property or liberty without due process of law" In *Goldberg v Kelly 397 U.S. 254 (1970) this* Court has defined due process as an evidentiary proceeding , especially where there is an existing legal entitlement. In Goldberg it was government benefits, in the present matter it is the Rules of law of the Uniform Commercial Code .Therefore this dismisal is unconstitutional, and the Appellate Division of NY State Supreme Court that has adjudicated four appeals in this matter , recognizes the due process 14th Amendment requirements. .Petitioner is entitled to a due process evidentiary proceeding. The dismissal violated her Constitutional rights,

(2) The dismissal was based on fraud , serial perjury and lies stitched together by HSBC Bank USA that have been previously disregarded.

In the false oral presentations and perjured pleadings by Mr. Scott Miller Esq.in which he so shamelessly deceived the court in the May 31, 1996 appeal by insisting that this matter had been adjudicated in the marital dissolution, that these stolen funds had remained in the accounts for the marital distribution in which Petitioner was compensated .In the reported decision, the Court held that if the marital split was 50/50, and the funds had remained in those accounts to be distributed , than Petitioner had been partially compensated , therefore she is entitled to an additional 50% of the stolen funds and other (App)

With full knowledge that what they were offering is false, fraudulent and perjured , HSBC's counsel appearing no more honorable than Mr. Miller Esq. asserted that Petitioner is only entitled to $47 .800 . Thereafter Respondents took the two checks that Petitioner had written on January 13, 1986: one on her credit card account for $10.000 (see pg 5 of this petition for details)and the other from the marital account written on that day for household expenses (pg 5) for $22.000 ,copied and inserted it twice making that check $44.000 and concluded that petitioner had received $54.000 and therefore has been overcompensated, because she was only entitled to $47.800.

The Appellate Division agreed with that bizarre, mindless scenario, and after 20 years dismissed Petitioner's claim..

(3) Even in a court that loves them , Respondent's claim is res judicata , has been for almost 20 years and they were collaterally estopped from using this defense

In June 1987 when Petitioner filed suit against Respondents Marine Midland and M&T bank, they impleaded D. Summer as a third party Defendant.(App) While he never said that the funds at Merrill Lynch were his or even marital , because Petitioner had the.evidence to prove the facts. But in his defense he used the same story as Respondents did in this appeal Judge Forma in his decision of March 1988, (App) dismissed that claim, held Marine Midland liable to Petitioner, and transferred the matter to Judge Francis. No additional order by a lower court has ever revisited this claim by Summer again. In the previous appeals the Appellate Division had the old claim before it, and never revisited or affirmed it . They revisited it now because they needed any excuse to rule in favor of Respondent. This is quite troubling and pathetic.

(4) Bias and Retaliation

The dismissal of this matter at this stage of the proceedings after 20 years of litigation and proceedings , after several lower court orders favoring Petitioner, and three (possibly four) orders by this Appellate Court, when there is nothing new, in facts or

in law, than one has to conclude that it is on the wish list of the court to favor the Respondents at the expense of the Petitioner. perhaps more accurately stated is : to reward the Respondents and punish the Petitioner. This is a gross violation of their judicial oath , abuse of power , abuse of discretion and works incalculable injury to the rights of individuals and to the government institutions affirming those rights. In *Tumey v Ohio ,273 U.S. 510 (1927)* this Court has held that:" it has been our holding for more than half a century that everyone is entitled to an unbiased court. "

The Appellate Div. had exhibited multi layered bias against Petitioner in matters leading up to this decision along with a desire and intent to punish her in retaliation for disclosing the truth of the Respondent banks being rogues, and that officers and employees of Respondents banks, especially Marine Midland bank, now HSBC bank and Mr.. Miller Esq. are corrupt, are liars and serial perjurers. Mr. Miller Esq. is a common crook and gangster who has obviously exploited Petitioner and caused her harm, but also exploited the Judicial system. through incredible lies and deceit. He is not fit to be associated with a fiduciary institution, deserves a repose from his license to practice law, and some time in a prison. The court knew the veracity of this , just did not want it mentioned ..

In proceedings leading up to this decision the Appellate Court had signaled that Respondents would prevail: but the brazenness of actually doing so is a surprise. The Western NY legal -judicial - banking community is intertwined ,especially the older established ones, they all know and depend on each other, protect each other, and being against one of the iconic banks in town could be very career damaging. The facile manner in which the Appellate Div has accepted the false ,perjured and fraudulent deprecation of the facts and law in the present matter as presented by Respondents , despite their having the facts in front of them which they have had for many years, is very troubling, yet is indicative of these long term ties and mutual support. The court knows who the crooks are they just took exception to Petitioner spreading it. .The Appellate Division was thoroughly familiar with the facts and the law, they just forgot the Constitution and the Bill of Rights their oath, their duty, their ethics and their morals.

(5) Gender bias and lococentrism

There is an impermissible element of gender bias and loco centrism or regionalism in the dismissal of this claim. Petitioner, a woman from 3000 miles away , challenging the mostly male establishments of the banks, the appellate court and of the home town "folk" was not considered important for due process and equal protection entitlements It is incontrovertibly evident that the United States Constitution was of no import or consideration in this decision at instant.

(6) The public interest

There are several elements in this dismissal that are injurious to the public interest. Banks are federally chartered fiduciary institutions whose integrity being mandated, is therefore assumed and the public relies and depends on it. Petitioner relied on them as well. Petitioner had a right to expect the requisite integrity leve from Respondents Marine Midland Bank , now HSBC Bank USA and M&T. Bank They are rogue , deviant institutions that are a threat to the public interest and well being. These malfeasants mus be held accountable for their past corrupt misconduct, and harm to Petitioner. For 20 years Petitioner has been deprived of her money the income this invested money generated ,all of which was sorely needed. Additionally Petitioner had to spend large sums of money for legal fees, to salvage her assets from perfidious .miscreants.

(7) The interest of Justice.

Alongside the public interest is the interest in justice. In *Gondek v Pan American World Airways, 370 U.S. 918, 371 U.S. (1962), 382 U.S. 25 (1965)* , this Court applied a standard of "the interests of justice" to revisit previously denied relief. Justice demands attention, and in the present matter , justice having been previously denied, intentionally but through the malfeasance of Respondents. Petitioner is praying for justice.

CONCLUSION

The decision below conflicts with this Court's precedents , with Constitutional mandates , with the Rules of the Uniform Commercial Code, with the Federal Banking Laws, with the Rules of Civil Procedure as well as the precedents of the same court below. This case functions at an intersection of a State decision about Federal Institutions subject to federal and state laws.

Without this Court's intervention through a Writ of Certiorari Petitioner having exhausted all the available venues to pursue, has no further remaining opportunities , effectively nowhere to turn to seek restitution and damages , to receive what has been taken from her more than 20 years ago, and she will remain forever deprived.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted

April 29, 2006

Pepi Schafler, BA, MSSS, JD, PhD